

**FILED**

AUG 01 2011

Board of Vocational Nursing  
and Psychiatric Technicians

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**BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2010-1510

**KEVIN ANTHONY FRIEND  
2331 N. Crest Avenue  
Martinez, CA 94553**

**A C C U S A T I O N**

**Vocational Nurse License No. VN 214341**

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about April 13, 2005, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 214341 to Kevin Anthony Friend (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on June 30, 2012, unless renewed.

3. The Board issued Citation Order 10-0117-L to Respondent on July 7, 2010. The Citation alleged that Respondent while employed by Contra Costa Regional Medical Center was assigned to care for a patient who had a surgically implanted central venous catheter. The patient

1 expressed to Respondent that he wanted to shower. Respondent attempted to assist him and  
2 disconnected an IV attached to the catheter. The IV line was left open to air. This action was  
3 outside Respondent's scope of practice. On July 15, 2010, the Board convened an Informal  
4 Citation Review Conference. The Citation was affirmed. Respondent did not pay the Citation in  
5 full.

6 4. The Board also issued Citation Order 05-0044-L to Respondent on May 5, 2005.  
7 Respondent paid that Citation in full. The Citation alleges that Respondent failed to disclose his  
8 criminal conviction history on his application for licensure.

#### 9 JURISDICTION

10 5. This Accusation is brought before the Board of Vocational Nursing and Psychiatric  
11 Technicians (Board), Department of Consumer Affairs, under the authority of the following laws.  
12 All section references are to the Business and Professions Code unless otherwise indicated.

13 6. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part,  
14 that the Board may discipline the holder of a vocational nurse license for any reason provided in  
15 Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

16 7. Section 118, subdivision (b), of the Code provides that the  
17 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of  
18 jurisdiction to proceed with a disciplinary action during the period within which the license may  
19 be renewed, restored, reissued or reinstated.

20 8. Section 2892.1 of the Code provides, in pertinent part, that the Board may renew an  
21 expired license at any time within four years after the expiration.

#### 22 STATUTORY/REGULATORY PROVISIONS

23 9. Section 2878 of the Code states, in pertinent part:

24 "The Board may suspend or revoke a license issued under this chapter [the Vocational  
25 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

26 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

27 "(1) Incompetence, or gross negligence in carrying out usual nursing functions."

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1        10. Section 2878.5 of the Code states, in pertinent part:

2        "In addition to other acts constituting unprofessional conduct within the meaning of this  
3 chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed  
4 under this chapter to do any of the following:

5        "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
6 physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or  
7 administer to another, any controlled substance as defined in Division 10 of the Health and Safety  
8 Code, or any dangerous drug as defined in Section 4022.

9        "(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code,  
10 or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in a  
11 manner dangerous or injurious to himself or herself, any other person, or the public, or to the  
12 extent that the use impairs his or her ability to conduct with safety to the public the practice  
13 authorized by his or her license."

14        11. Section 11032 of the Health and Safety Code provides, in pertinent part, that the term  
15 "narcotics" means controlled substances classified in Schedule I or II as defined in section 11054  
16 or 11055 of that code.

17        12. California Code of Regulations, title 16, section 2519, states:

18        "As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional  
19 conduct and is a ground for disciplinary action. As used in Section 2878 'gross negligence' means  
20 a substantial departure from the standard of care which, under similar circumstances, would have  
21 ordinarily been exercised by a competent licensed vocational nurse, and which has or could have  
22 resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief  
23 that there was a conscious disregard or indifference for the health, safety, or welfare of the  
24 consumer shall be considered a substantial departure from the above standard of care."

25        13. California Code of Regulations, title 16, section 2520, states:

26        "As set forth in Section 2878 of the Code, incompetence is deemed unprofessional conduct  
27 and is a ground for disciplinary action. As used in Section 2878 'incompetence' means the lack of  
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1 possession of and the failure to exercise that degree of learning, skill, care and experience  
2 ordinarily possessed and exercised by responsible licensed vocational nurses."

### 3 COST RECOVERY

4 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
5 administrative law judge to direct a licentiate found to have committed a violation or violations of  
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
7 enforcement of the case.

### 8 DRUGS

9 15. **"Methadone"** is a Schedule II controlled substance as designated by Health and  
10 Safety Code section 11055, subdivision (c)(14) and a dangerous drug pursuant to Code section  
11 4022.

### 12 FIRST CAUSE FOR DISCIPLINARY ACTION

13 (Unprofessional Conduct - Gross Negligence)

14 (Bus. & Prof. Code § 2878(a))

15 16. Respondent has subjected his vocational nurse license to disciplinary action under  
16 section 2878, subdivision (a), of the Code on the grounds of gross negligence. The circumstances  
17 are as follows:

18 a. On or about October 13, 2010, Respondent tested positive for Methadone while  
19 employed as a registry licensed vocational nurse with Maxim Healthcare Services (MHS) in  
20 Concord, California. On or about October 2010, a routine "competency" check performed during  
21 one of Respondent's in-home assignments found Respondent's behavior to be "suspicious" and  
22 consistent with one who may be under the influence of narcotics. At that competency check,  
23 Respondent was unable to answer questions related to the patient's chart and the physician's  
24 orders. As a result of Respondent's behavior, MHS requested Respondent to submit a urine  
25 specimen for toxicology screening, which tested positive for Methadone. Respondent did not  
26 have a valid prescription for Methadone. Respondent admitted that he used Methadone two days  
27 prior to submitting his urine specimen for toxicology screening. Respondent refused to identify  
28 the person who supplied the Methadone to him.

1       b.     Several MHS patient assigned to Respondent for in-home care requested that  
2 Respondent not return to care for them. The reasons provided related to Respondent's personal  
3 conduct. Respondent was not assigned to patients who were either prescribed narcotics or had  
4 physician orders for narcotics, especially Methadone. On October 22, 2010, Respondent was  
5 terminated from MHS based on his positive test result for Methadone.

6                               SECOND CAUSE FOR DISCIPLINARY ACTION  
7                               (Unprofessional Conduct - Incompetence)  
8                               (Bus. & Prof. Code §2878(a))

9       17.     Respondent has subjected his Vocational Nurse License to disciplinary action  
10 under section 2878, subdivision (a) of the Code on the grounds of incompetence based on  
11 the acts and/or omissions set forth in paragraph 16, above.

12                               THIRD CAUSE FOR DISCIPLINARY ACTION  
13                               (Obtained, Possessed and Self-Administered Controlled Substance)  
14                               (Bus. & Prof. Code §2878.5(a))

15       18.     Respondent has subjected his Vocational Nurse License to disciplinary action  
16 under section 2878, subdivision (a), of the Code on the grounds of unprofessional conduct as  
17 defined by Code section 2878.5, subdivision (a). Specifically, as set forth in Paragraph 16 above,  
18 Respondent committed the following acts:

19       a.     He obtained Methadone, a controlled substance, without having a valid  
20 prescription for that controlled substance.

21       b.     He possessed Methadone, a controlled substance, in violation of Business and  
22 Professions Code section 4060.

23                               FOURTH CAUSE FOR DISCIPLINARY ACTION  
24                               (Used a Controlled Substance to a Dangerous Extent)  
25                               (Bus. & Prof. Code §2878.5(b))

26       19.     Respondent has subjected his Vocational Nurse License to disciplinary action  
27 under section 2878, subdivision (a), of the Code on the grounds of unprofessional conduct as  
28 defined by Code section 2878.5, subdivision (b). Specifically, as set forth in paragraph 16 above,  
Respondent used Methadone to an extent or in a manner dangerous or injurious to himself or  
others, or to the extent that his usage impaired his ability to conduct with safety to the public the  
practice authorized by his license.

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3. Taking such other and further action as deemed necessary and proper.

DATED: August 1, 2011



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2011201563  
CR: 06/30/11